

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BERNABE ENCARNACION,

Petitioner,

**No. 01-cv-0586
(GLS-VEB)**

v.

**MICHAEL McGINNIS, *Superintendent
of Southport Correctional Facility,***

Respondent.

APPEARANCES:

OF COUNSEL:

FOR THE PETITIONER:

BERNABE ENCARNACION

Pro Se

91-B-0943

Southport Correctional Facility

P.O. Box 2000

Pine City, New York 14871

FOR THE RESPONDENT:

HON. ANDREW M. CUOMO

New York Attorney General

120 Broadway

New York, New York 10271

ASHLYN H. DANNELLY, ESQ.

MARIA MORAN, ESQ.

Gary L. Sharpe

U.S. District Judge

DECISION AND ORDER

On April 20, 2001, Bernabe Encarnacion, proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his New York State conviction and sentence for murder in the second degree and promoting prison contraband in the first degree. (Dkt. No. 1.) On October 26, 2007, Magistrate Judge Victor Bianchini issued a Report and Recommendation (“R&R”) recommending that the petition be denied. (Dkt. No. 58.)¹ Pending are Encarnacion’s written objections (“Objections”) to the R&R. (Dkt. No. 61.) Encarnacion’s Objections are lengthy, detailed, and specific. Accordingly, the court has reviewed the R&R *de novo*. See *Almonte v. New York State Div. of Parole*, No. 04-cv-484, 2006 WL 149049, at *3 (N.D.N.Y. Jan. 18, 2006) (“The district court must review *de novo* those portions of the Magistrate Judge’s findings and recommendations that have been properly preserved by compliance with the specificity requirement.”). Upon careful consideration of Encarnacion’s arguments, the relevant parts of the record, and the applicable law, the court adopts the R&R in its entirety.

¹The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

Because the court agrees with Judge Bianchini's thorough treatment of Encarnacion's petition, and because, upon careful review, the Objections do not call into question the merits of the R&R, it is unnecessary for the court to embark upon a detailed discussion of Encarnacion's claims. See *Shah v. Helen Hayes Hosp.*, 252 Fed. Appx. 364, 366 (2d Cir. Oct. 29, 2007) ("Where a district court has stated that it has considered a party's objections to a magistrate judge's R&R, we have rejected the argument that the mere brevity of the district court's order granting summary judgment based upon that report and recommendation demonstrates the absence of a *de novo* review.") (summary order). It suffices to say that the court adopts Judge Bianchini's reasoning as its own. Accordingly, Encarnacion's petition is denied, as is his motion to amend/correct his petition. Furthermore, because the court finds that Encarnacion has not made a "substantial showing of the denial of a constitutional right" pursuant to 28 U.S.C. § 2253(c)(2), the court declines to issue a certificate of appealability.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Encarnacion's application for habeas corpus relief is DENIED and his petition is DISMISSED; and it is further

ORDERED that Encarnacion's motion to amend/correct his petition is DENIED; and it is further

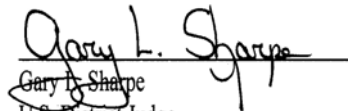
ORDERED that Magistrate Judge Bianchini's October 26, 2007 Report and Recommendation is adopted in its entirety; and it is further

ORDERED that because Encarnacion has failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability will not be issued; and it is further

ORDERED that the Clerk provide copies of this Decision and Order to the parties.

IT IS SO ORDERED.

Albany, New York
Dated: March 24, 2008



Gary L. Sharpe
U.S. District Judge